THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.26659 OF 2006

DATED: 19-07-2007

BETWEEN

M/s. Sai Balaji Wines, Kundanpalli,
Rep. by Auction Purchaser,
T. Satyanarayana, S/o. Bhupaiah,
R/o. Patabazar, Ward No. II,
Ramagundam Municipality,
Ramagundam, Karimnagar District.

...PETITIONER

AND

The Prohibition and Excise
Superintendent, Pedapally,
Karimnagar District and others.

...RESPONDENTS

ORDER:

Petitioner questions the order of the Deputy Commissioner of Prohibition and Excise, Karimnagar District dated 15.09.2006 in returning the proposal of the Prohibition and Excise Superintendent, Peddapally for shifting his A4 shop from Kundanpally to Ward No. II of Ramagundam Municipality and the consequential intimation made to him by the Prohibition and Excise Superintendent, dated 28.10.2006 that his request for shifting the shop has not been considered by the Deputy Commissioner of Prohibition and Excise.

2. Petitioner is the auction purchaser of the shop at Gazette Sl.No.31 of the auction notification issued by the District Collector, Karimnagar dated 27.05.2006 in respect of the shop located at Kundanpalli of Ramagundam Municipality. As many as 18 shops have been notified in Ramagundam

Municipality and the petitioner is the licensee in respect of the aforesaid shop. The said shop though notified last year at Ward No. II of Ramagundam Municipality, it was permitted to be shifted to Kundanpalli and this year as the petitioner became the highest bidder, he made an application for shifting the said A4 shop from Kundanpalli to Ward No.II of Ramagundam Municipality. The fourth respondent is the licensee in respect of shop at Ward No.III of Ramagundam Municipality and no shop has been notified at Ward No.II. The Prohibition and Excise Superintendent recommended the shifting of the shop of the petitioner in view of

Rule 29(3) of the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short 'the Rules').

It is just and proper to extract Rule 29 of the said Rules:

> **"29. Sale permitted at the licensed premises only : -**
>
> (1) The lease holder shall sell the liquor only at the premises specified in the licence.
>
> (2) No change or alteration of the licensed premises shall be made nor the licensed premises shifted elsewhere.
>
> (3) Shifting of the licensed premises may be permitted for valid reasons within the notified area and subject to conditions as may be specified by the Commissioner of Proh & Excise, subject to payment of 1% of the lease amount or Rs.25,000/- whichever is higher.
>
> "Provided that the Commissioner may consider and permit for valid reasons shifting of the licensed premises, not withstanding the notified area of the licensed premises, within the same Mandal or Municipality or Municipal Corporation without affecting the total number of Notified shops in the said Mandal or Municipality or Municipal Corporation subject to conditions as specified by the Commissioner and subject to payment of 1% of lease amount or Rs.25,000/- whichever is higher."

3. Learned counsel for the petitioner submits that though the Prohibition and Excise Superintendent recommended for shifting the A4 shop of the petitioner from Kundanpalli to Ward No.II of Ramagundam Municipality, the same was not considered by the Deputy Commissioner of Prohibition and

Excise, therefore, the petitioner earlier filed W.P.No.21115 of 2006 before this Court and this Court by order dated 11.10.2006 disposed the writ petition directing the respondents herein to consider and dispose the request of the petitioner and pass appropriate orders in accordance with law. Pursuant to the said order, the Deputy Commissioner of Prohibition and Excise by Proc.Cr.No.751/2006/P&Ex/A1 dated 15.09.2006 informed the petitioner that as per the guidelines issued by the Commissioner of Prohibition & Excise in Cr.No.10487/2006/CPE.C4 dated 18.07.2006, the request of the petitioner cannot be considered.

4. The guidelines issued by the Commissioner of Prohibition & Excise by proceedings dated 18.07.2006 are as under:

OFFICE OF THE COMMISSIONER OF PROH. & EXCISE: AP: HYDERABAD

CR.No.10487/06/CPE/C4 Dated: 18-07-2006

Sri B.R. Meena, IAS.,
Commissioner of Prohibition & Excise

* * *

Sub: - PROH. & EXCISE – Mahabubnagar Div – M/s. New Chandra Wines A4 Shop at Mahabubnagar – Certain request for shifting of premises from ward No.17 to 27 – Further report called for –Reg.

Ref: - 1. Proh & Excise Superintendent, Mahabubnagar, Cr.No.A1/448/06, dt. 13.7.2006.
2. Dy. Commissioner of Proh. & Excise, Mahabubnagar Cr.No.A3/253/06, dt. 13.7.2006.

* * *

The attention of Dy. Commissioner of Prohibition and Excise, Mahabubnagar is invited to the reference cited. He is requested to send his report keeping in view the following guidelines;

1. The DC concerned should personally verify facts/circumstances in the proposed shifting.
2. There should not be any notified A4 shop in the proposed area/locality for shifting.
3. There should not be any objection from the nearby A4 shop/2B Bar.

SD/- P.R.S PRASADA RAO
FOR COMMISSIONER OF PROH. & EXCISE"

A perusal of the said guidelines goes to show that the said proceedings had been issued with reference to shifting of shop in

Mahabubnagar District, therefore, it cannot be said that the aforementioned guidelines are general guidelines applicable to all the districts. In the instant case, the Deputy Commissioner personally verified the facts with reference to the recommendations made by the Prohibition & Excise Superintendent and in fact, no shop was notified at Ward No.II of Ramagundam Municipality; though, the guidelines
1 and 2 of the aforesaid proceedings have been satisfied, the request of petitioner was returned by the Deputy Commissioner of Prohibition & Excise on the ground that there was objection by the nearby
A4 shop.

5. Learned counsel for the petitioner submits that the A4 shop of the fourth respondent is located in Ward No.III of Ramagundam Municipality, therefore, it cannot be said that he is an affected party. He further submits that the petitioner has paid Rs.25,000/- for considering his application as per Rule 29(3) of the Rules.

6. As per the said Rule it is for the Commissioner to consider and permit for valid reasons shifting of the licensed premises, within the same Mandal or Municipality. The request of the petitioner for shifting the shop is within the same Municipality and in fact, the said shop was notified in the last year notification at Ward No.II of Ramagundam Municipality itself and this year no shop has been notified at Ward No.II. However, it is for the Commissioner to consider or not and permit the shifting of shop, but there is no justification on the part of the respondents 1 and 2 in rejecting the request of the petitioner.
I am of the opinion that in the instant case, the Prohibition and Excise Superintendent and the Deputy Commissioner of Prohibition and Excise, have not made any comments but only returned the proposal based on the guidelines issued by the Commissioner by proceedings dated 18.07.2006. However, the said proceedings relate to Mahabubnagar District, therefore, I am of the opinion that it is for the Commissioner of Prohibition and Excise to consider the matter based on the aforesaid proposals of the Prohibition and

Excise Superintendent by obtaining fresh remarks through the Deputy Commissioner of Prohibition and Excise and pass appropriate orders in accordance with law. I am also of the opinion that it would be just and proper on the part of the Commissioner to lay down general guidelines with regard to shifting of A4 shop.

The writ petition is accordingly disposed of directing the Commissioner of Prohibition and Excise to consider the request of the petitioner for shifting of A4 shop and pass appropriate orders in accordance with law as expeditiously as possible within a period of three weeks from the date of receipt of a copy of this order after giving reasonable opportunity to the petitioner as well the fourth respondent. There shall be no order as to costs.

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V. ESWARAIAH, J

July 19, 2007
Note: Furnish C.C. of the order in three days
(**B**/**o**)
DSK